

# **REVIEW OF EVIDENCE RULES RELATED TO OPINION TESTIMONY**



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# SIX RULES

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- 1 - Lay Opinion, 701
- 4 - Expert Opinion, 702 - 705
- 1 - Court Appointed Experts, 706
- Interplay with
  - 602- First-hand knowledge & 701
  - 403 & 403 – Relevance & 701, 702
  - 104- Preliminary Questions & 702, 703

# OPINION TESTIMONY

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- Rationally based upon the perception of the witness AND
  - Helpful to a Clear Understanding AND
  - NOT based on scientific, technical, or other specialized knowledge within the Scope of Rule 702
  - LAY WITNESS
  - If scientific, technical, or other specialized knowledge will ASSIST AND
  - Witness qualified by knowledge, skill, experience, training, or education, AND
  - the testimony
  - (1) is based upon sufficient facts or data,
  - (2) is the product of reliable principles and methods, and
  - (3) witness has applied the principles and methods reliably to facts

**EXPERT WITNESS**



# LAY WITNESS OPINION, 701

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- **Rationally Based on the Witness' Perception and**
- **Helpful to Clear Understanding of Testimony or Fact in Issue**
- **and not based on Scientific, Technical, or Specialized Knowledge**



# EXPERT OPINION

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- Scientific, Technical, or Specialized Knowledge
- Assist the Trier of Fact
- And Qualified by Knowledge, Skill, Experience, Education, or Training
- AND



# *Daubert* addition to FRE



## 702

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- Or otherwise , if
- (1) the testimony is based upon sufficient facts or data,
- (2) the testimony is the product of reliable principles and methods, and
- (3) the witness has applied the principles and methods reliably to facts of the case.



# Indiana Rule 702(b)

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- **“Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rest are reliable.”**



# ANALYSIS FOR EXPERT OPINIONS

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- Is the expert sufficiently qualified by virtue of training, education, experience, or knowledge?
- will the opinion assist the trier of fact in understanding the evidence or determining a fact in issue?
- 702





## CONT'D

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- Is the testimony based upon sufficient facts or data?
- Is the testimony the product of reliable principles and methods?
- Has the witness applied the principles and methods reliability to the facts of the case?
- *Daubert* amendment to 702



# **BASES OF OPINION**

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- **Facts of Data Perceived by expert at or before hearing or trial**
- **Facts or Data Made Known to expert at or before hearing or trial**
- **If underlying facts are reasonably relied upon by experts in the field, need not be admissible in evidence**
- **703**



# **INADMISSIBLE FACTS OR DATA**

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- **Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion unless the court determines that their probative value in assisting the jury in evaluating the evidence substantially outweighs their prejudicial effect.**
- **703**

# OPINION ON ULTIMATE ISSUE



- Does not make opinion objectionable
- BUT
- Witness may not testify as to opinion of mental state or condition of criminal defendant constituting an element of the crime or defense.
- 704

# DISCLOSURE OF UNDERLYING FACTS OR DATA

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- Expert witness is not required to disclose facts or data underlying the opinion in advance of giving the opinion, unless the court so orders
- But may be required to disclose on cross-examination
- 705



# **SUMMARY OF RULES RELATING TO EXPERT OPINION**

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- **702 – sets forth standards of admissibility of expert opinion**
- **703 & 705 – sets forth what expert can base opinion upon (bases of opinion), when the bases is admissible, and when the bases must or may be revealed**
- **704 – removes common law rule disallowing opinions on ultimate issue; sets forth special rule regarding mental state of defendant in criminal case**



# STANDARD FOR ADMITTING EXPERT TESTIMONY

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- *Frye* Doctrine – General Acceptance
- Assist Standard



# U.S. SUPREME COURT AND EXPERT TESTIMONY

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- ***Daubert*** – Scientific Validity, Assistance, and Admissibility
- ***Joiner*** – Standard for appellate review
- ***Kumho Tire Co. Ltd.*** – Application to types of opinion evidence





# ***DAUBERT***

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- ***Frye* is not the standard under Rule 702**
- **Expert testimony must meet a standard of evidentiary reliability AND must assist**
- **Evidentiary reliability will be based upon scientific validity**
- **Assist standard requires valid scientific connection to pertinent inquiry**
- **Some theories beyond question**



# DAUBERT AND THE GATEKEEPER FUNCTION

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- Trial Judge will determine admissibility based on validity and connectedness
- Validity may depend on test, peer review, publication, rate of error, acceptance
- Cross-examination; presentation of contrary evidence, and careful jury instructions on the burden of proof are appropriate means for attacking shady, but admissible evidence



# ***JOINER***

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- Trial judge's decision to admit or exclude expert testimony will be judged on appeal by an abuse of discretion standard
- Decision need not be solely based on methodology and principles, but may consider conclusions

# ***KUMHO TIRE CO., LTD.***



**Gatekeeping function applies to all expert testimony, not just scientific testimony**

- **Function is to assure testimony is preceded with same rigor as laboratory, field**
- ***Daubert* factors should be considered where they are reasonable measures of reliability**
- **Whether the factors are a reasonable measure of reliability is a matter for the trial judge's discretion**